

## **AGREEMENT**

This Agreement (the "Agreement") by and between Scholastic Inc., a New York corporation located at 557 Broadway, New York, New York 10012 ("Scholastic") and Memphis City Schools located at 2597 Avery Avenue, Memphis, TN 38112 (the "District") (together, the "parties") is executed as of June 1, 2010 pursuant to the terms set forth below.

WHEREAS, the District desires to purchase certain software as more fully detailed in the attached Exhibit A (collectively, the "Program"), and related services as described in the attached Exhibit A (collectively, the "Services"); and

WHEREAS, Scholastic desires to license the Program to the District, and perform the Services, in consideration for the Fees;

NOW THEREFORE, the Parties hereby agree as follows:

1. **Program and Services.** (i) Subject to the payment of the Fees (as defined herein), Scholastic (a) shall provide the training and support services as set forth in Exhibit A (the "Services") and (b) hereby grants to the District a limited, nonexclusive license to use the Program for its own non-commercial use, in machine-readable, object code form only. The license of each Program is further governed by each Program's end user license agreement ("EULA").

(ii) The Services are provided on the basis of an eight (8) hour day. Any cancellations or rescheduling of Services must be done with no less than twenty-four (24) hours notice, or the District will be charged for the cancelled day. Unless otherwise agreed upon in writing, all services must be delivered within twenty-four (24) months of purchase.

2. **Fees.** The District agrees to pay for the Services and the license to the Program a total purchase price of Five Hundred Ninety Two Thousand, Six Hundred Seventy Five Dollars and Thirteen Cents (\$592,675.13) as set forth in Exhibit A (the "Fees"), which is incorporated herein. Payment for Services and Program will become due after rendered and/or delivered and accepted. Scholastic will submit detailed and itemized invoices indicating Services and Program along with fees. All invoices shall be paid within sixty (60) days of receipt. If such payments are not made within sixty (60) days, Scholastic may terminate this Agreement upon thirty (30) days prior written notice of such breach, unless such breach is promptly cured. The Program is shipped FOB shipping point.

3. **Inspection and Acceptance.** The District shall inspect the Program at the time and place of delivery. Such inspection may include reasonable tests of the Program by the District. If, in the determination of the District, the Program fail to conform to the Agreement or its specifications or is damaged IN ANY MANNER OR RESPECT, the District shall so notify Scholastic within ten (10) days of delivery of the Program to the District. Failing such notice, the Program shall be deemed accepted by the District as of the date of receipt.

4. **Rejection.** In the event of such notice of non-conformity by the District pursuant to this section immediately following delivery of the Program prior to

acceptance, the District may, at its option, (1) reject the whole of the Program, (2) accept the whole of the Program, or (3) accept any commercial unit or units of the Program and reject the remainder. The return of the Program and refund to the District of any Fees paid for such Program shall be the sole remedy of the District. In the event of such notice and election by the District, the District agrees to comply with all reasonable instructions of Scholastic and, in the event that out-of-pocket expenses are actually incurred by the District in following such instructions, Scholastic shall reimburse the District in full for such expenses.

5. **Term.** With respect to the Program, the term of this Agreement shall be consistent with the terms specified in the EULAs included in the Program. With respect to the Services specified in Paragraph 1 above, the term shall commence upon the date set forth above through June 30, 2011.

6. **Waiver.** (i) The failure of either party at any time to require performance by the other of any provision of this Agreement will in no way affect the full right to require such performance at any time thereafter. Nor will the waiver by either party of a breach of any provision hereof be construed as a waiver of any succeeding breach of that provision.

(ii) Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstances will be ineffective to the extent of such invalidity or unenforceability only and without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or enforceability in any jurisdiction or circumstance will not invalidate or render unenforceable such provision in any other jurisdiction or circumstance.

7. **Notices.** All notices hereunder will be in writing and will be effective upon delivery, upon deposit in the U.S. Mail if sent by certified or registered mail, return receipt requested, with proper postage affixed, or sent by overnight courier, or by fax with receipt confirming transmission and sent to the address specified below:

If to the District:  
Linda Kennard, Ed.D.  
Curriculum and Instruction  
Memphis City Schools  
2930 Airways  
Memphis, TN 38116

With a copy to:  
Contract Services  
Memphis City Schools  
2597 Avery Avenue  
Memphis, TN 38112

If to Scholastic:  
Scholastic Inc.  
568 Broadway  
New York, NY 10012

Attention: Beth Polcari  
With a copy to:  
Scholastic Inc.  
557 Broadway  
New York, NY 10012  
Attention: Executive Vice President and General Counsel

8. **Intellectual Property Rights.** The District acknowledges and agrees that all right, title, and interest in and to the Program and the Services, including associated intellectual property rights, are and shall remain with Scholastic and/or its licensors. The District agrees that the Program and any additional material that may be created pursuant to this Agreement is the exclusive property of Scholastic and all right, title and interest therein, including all intellectual property rights such as copyright, shall automatically vest in Scholastic. For the avoidance of doubt, the term "Program" includes all accompanying materials and documentation, and all training and other written materials provided in connection with the Services. The Program, if it includes software, may be installed on the number of servers and workstations required to support the number of licensed seats purchased with the Program. The District agrees that it will not assign, sublicense, transfer, pledge, lease, rent, or share its rights under this Agreement. The District shall not disassemble, decompile, reverse engineer, or create derivative works from the Program.

9. **Assignment.** The District shall not assign or transfer this Agreement to any person, firm, corporation, or any other entity, without the prior written consent of Scholastic.

10. **Third Parties.** Nothing in this Agreement, express or implied, is intended or will be construed to confer upon or give to any person, firm, corporation or any other entity other than the parties hereto any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, all of which will be for the sole and exclusive benefit of the parties hereto.

11. **Headings and Survival.** The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only, are of no binding effect, and in no respect define, limit or describe the scope of this Agreement or the intent of any paragraph herein. Sections 8-10 shall survive termination or expiration of this Agreement.

12. **Relationship of the Parties.** It is acknowledged and agreed that each party is a separately established entity, and that no party is the partner or legal representative of the other, nor does any party have the authority to bind the others to any legal obligation.

13. **Termination.** This Agreement may be terminated by either party at any time upon breach or alleged breach of any material term or provision of this Agreement by the other which is not cured within thirty (30) days after written notice of such breach or alleged breach is given. Additionally, this Agreement may be terminated by the District for any reason, upon forty-five (45) days written notice. Scholastic shall be compensated for Services properly rendered prior to the effective date of termination.

The District will not be liable for services performed after the effective date of termination.

14. **Full Agreement.** This Agreement, and the EULA provided with the Program, constitutes the entire understanding and agreement between the parties concerning the subject matter herein, and supersedes all prior agreements or representations, oral or written. In the event any provision of any EULA and this Agreement conflict, this Agreement shall govern with respect to such provision. No amendment or modification of this Agreement will be effective unless in writing and signed by both parties, with the exception of any EULAs provided with the Program or any updates to the Program.

15. **Governing Law.** This Agreement shall be governed by the laws of the State of Tennessee without regard for its choice of law principles. The parties agree to submit to the exclusive jurisdiction of the courts in the State of Tennessee for any disputes or claims arising from or in connection with this Agreement.

16. **Confidentiality.** Public Records Act. The District is subject to the Tennessee "Public Records Act" Accordingly, no claim of confidentiality in all or any portion of information submitted will be honored unless a specific exemption from the Public Records Act exists. Subject to the foregoing, the District agrees that the Program and all materials therewith shall be kept confidential.

17. **Indemnification.** Scholastic agrees to indemnify and hold harmless the District and its affiliates, and their directors, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including reasonable legal fees and expenses) arising out of or related to any claim that the District's use or possession of the Program infringes or violates the copyright, patent, trade secret or other proprietary right of any third party. Scholastic shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that the District gives Scholastic prompt notice of any such claim of which it learns. The District shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing at its own expense.

18. **Injunction Work Around.** If a final injunction is obtained against the District in any proceeding or action for infringement, Scholastic will, at Scholastic's option and expense either (i) procure for the District the right to continue using the Program; (ii) replace or modify the infringing portion of the Program so that it becomes non-infringing; or (iii) refund all monies paid by the District to Scholastic hereunder; provided that any such procurement, modification or refund by Scholastic shall not relieve it of any other liability hereunder.

19. **Appropriation.** This Agreement is subject to the appropriation and availability of funds. In the event that the funds are not appropriated or are otherwise unavailable, MCS reserves the right to terminate this Agreement upon written notice to the Scholastic. Said termination shall not be deemed a breach of this Agreement by MCS. Upon receipt of written notice, Scholastic shall cease all work associated with this Agreement. In the event of termination, Scholastic shall be entitled to compensation for all satisfactory and authorized Services completed as of the termination date. Upon

such termination, Scholastic shall have no right to recover from MCS any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. The foregoing shall not apply to software.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written below.

**SCHOLASTIC INC.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MEMPHIS CITY SCHOOLS**

By: \_\_\_\_\_

Printed Name: Kriner Cash

Title: Superintendent

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Freda Williams

Title: Board President

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Chief Contracting Officer

Approved:

\_\_\_\_\_  
Office of General Counsel

**EXHIBIT A**  
**Services and Program Description and Fees**

ISBN #	Description	QT Y	Unit Price	Subtotal	Discount Amount	Total
<b>Stage B rBook Materials</b>						
968929	READ 180 Stage B, rBook Student Package (16 copies)	108	\$479.00	\$51,732.00	\$0.00	\$51,732.00
973641	READ 180 Stage B, Transparencies	5	\$59.95	\$299.75	\$0.00	\$299.75
973483	READ 180 Stage B, rBook Teacher's Edition (individual copy)	5	\$425.00	\$2,125.00	\$0.00	\$2,125.00
977538	READ 180 Stage B, Workshop Anchor Videos (DVD)	5	\$250.00	\$1,250.00	\$0.00	\$1,250.00
<b>Stage C rBook Materials</b>						
968930	READ 180 Stage C, rBook Student Package (16 copies)	120	\$479.00	\$57,480.00	\$0.00	\$57,480.00
973642	READ 180 Stage C, Transparencies	18	\$59.95	\$1,079.10	\$0.00	\$1,079.10
973485	READ 180 Stage C, rBook Teacher's Edition (individual copy)	18	\$425.00	\$7,650.00	\$0.00	\$7,650.00
977539	READ 180 Stage C, Workshop Anchor Videos (DVD)	18	\$250.00	\$4,500.00	\$0.00	\$4,500.00
981245	READ 180 Stage C Teacher's Resource Package	3	\$2,450.00	\$7,350.00	\$0.00	\$7,350.00
981295	READ 180 Stage C Paperback and Audiobook Collection	3	\$5,175.00	\$15,525.00	\$0.00	\$15,525.00
<b>Technical Services</b>						
991744	Premium Product Maintenance and Support Plan for 51-80 schools (one year, price per school)	65	\$2,950.00	\$191,750.00	\$67,275.00	\$124,475.00
988192	In-Person Technical Visit/Installation (Each Additional Aggregation or Application Server; 30 workstations)	6	\$1,000.00	\$6,000.00	\$0.00	\$6,000.00
<b>Professional Development</b>						
500214	Scholastic Project Management Services	200	\$1,899.00	\$379,800.00	\$80,000.00	\$299,800.00
<b>Subtotal</b>				\$726,540.85	\$147,275.00	\$579,265.85
				<b>Shipping and Handling</b>		\$13,409.28
				<b>Sales Tax</b>		\$0.00
Prices are valid for 90 days.				<b>Total</b>		\$592,675.13